

Original

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 2 E-30055, 530-2-35 Low
 3 Post Office Box 9
 4 Avenal, CA 93204

5 In Pro Per

*FILED**APR 15 PM 1:07**CLERK'S OFFICE
NORTHERN DISTRICT COURT
U.S. DISTRICT COURT
CALIFORNIA**J*

6 IN THE UNITED STATE DISTRICT COURT
 7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 Manuel A. Wagan) No. C 08-1082 WHA (PR)
9 Petitioner,) NOTICE MOTION TO RECONSIDER
10 v.) AND REVERSE "JUDGMENT"
11 SAN MATEO COUNTY SUPERIOR COURT) ENTERED IN FAVOR OF RESPONDENT
12 Respondent,) BECAUSE THE COURT HAS NO
13 CALIFORNIA ATTORNEY GENERAL) JURISDICTION TO ENTERED
14 Real Party in Interest.) JUDGMENT IN FAVOR OF

RESPONDENT PURSUANT TO RULE 81
 (B) Mandamus are abolished;
 BUT IF THE HONORABLE COURT
 WOULD LIKE TO TAKE JURISDICTION
 OF PETITIONER'S WRIT OF
 MANDAMUS PETITIONER RESPECTFULLY
 REQUEST THAT HE BE ALLOWED TO
 PROCEED IN FORMA PAUPERIS AND
 ORDER RESPONDENT TO RESPOND
 AND ADJUDICATE PETITIONER'S
 CLAIM ON THE MERIT. (ATTACHED
 PRISONER'S APPLICATION TO
 PROCEED IN FORMA PAUPERIS.)

Petitioner filed a "Motion to voluntarily withdraw or dismiss his Petition for Writ of Mandamus/Prohibition (document number 5) because under Rule 81 (B) mandamus are abolished in the district court¹, so, the district court has no jurisdiction to enter "Judgment in favor of the respondent under Rule 81 (B). The "Judgment in favor of respondent must be reconsider and reverse because any ordered judgment of any court without jurisdiction is void because it violates Petitioner's "Due Process Right", liberty

1. Abolish, v. suppress, put an end to, cease, void, annul, invalidate, nullify, cancel, revoke, rescind, repeal, eradicate, stamp-tout, annihilate, exterminate, destroy, do away with, abrogate, obliterate, erase, extinguish, put out, eliminate. By The Random House Basic Dictionary of Synonyms & Antonyms.

1 interest, and equal protection under the 14th Amendment of the
2 United States Constitution.

3 Both California and Federal Jurisprudence recognize that
4 question of jurisdiction may be raised at anytime, and cannot be
5 waived by Petitioner. *Fraytag v. Commission of Internal Revenue*,
6 50 U.S. 868, 896, 11 S.Ct. 2631 (1991) discussing the "None
7 waiveability" of lack of subject matter jurisdiction.

8 In the present case, the United States District Judge William
9 Alsup has no jurisdiction to ordered "Judgement in favor of
10 respondent (See Attached 2) on 04/03/08. Petitioner cannot waive
11 his claim because Petitioner was convicted of "First Degree Attemp-
12 ted Murder" a noncrime in California and was sentence to Life
13 with a possibility of parole without a conviction of willful,
14 deliberate, and premeditated attempted murder. (See Petition for
15 Writ of Mandate/Prohibition pages 1 to 18.) The Due Process
16 Clause of the Fourteenth mendment of the United States Constitu-
17 tion in *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970), held
18 that due process requires that all elements of a crime be proved
19 beyond a reasonable doubt. Thus, the Respondent violated Peti-
20 tioner's due process right when it imposed a life sentence to the
21 Petitioner without a conviction of willfu, deliberate, and
22 premeditated attempted murder. "The Due Process Clause of the
23 14th Amendment was intended to prevent government 'from abusing
24 (its) power, employing it as an instrument of oppression,'"
25 *Davidson v. Cannon*, 106 S.Ct. at 670; see also *DeShaney v.*
26 *Winnebago Dept. of Soc. Sev.*, 489 U.S. 189, 196, 109 S.Ct. 998,
27 1003 "To secure the individual from the arbitrary exercise of

power of government." and "to prevent governmental power from being used for purposes of oppression". "The touchtone of due process is the protection of the individual against arbitrary government action. *Dent v. West Virginia*, 129 U.S. 114, 123 (1899); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *Daniels v. Williams*, 474 U.S. 327, 331 (1986).

But if the Honorable Court decided to take jurisdiction of Petitioner's Writ of Mandamus/Prohibition on whatever Federal Statutory Authority the Court chose to do so, Petitioner respectfully request that he be allowed to "Proceed in Forma Pauperis and order Respondent to respond to the merit of Petitioner's claims and "reconsider and reverse" "Judgment entered in favor of respondent and vacate order "Dismissing Case". (See Attached 1 Order Dismissing Case and Attached 2 Judgment.) (See also Motion Prisoner's Application to Proceed in Forma Pauperis and Trust Account Statement and Petitioner is requesting waiver of Certified Certificate of Funds in Prisoner's Account because of Avenal State Prison's Policy that they want to have copy of Petitioner's Legal Mail that going to the Court which violate Petitioner's right to Confidential Legal Mail.)

Therefore for the above stated reason petitioner respectfully request that the Honorable Court grant this motion in the interest of justice so required. And appoint counsel to protect Petitioner's right to Due Process Clause under the 14th Amendment of the U.S. Constitution. Pro Per filling must be liberally construed *Haines v. Kerner*, ___ S.Ct. ___.

1 Petitioner declare under the penalty of perjury that the
2 foregoing is true and correct.

3 Date: April 9, 2008.

4 Respectfully submitted,

5 Manuel A. Wagan SAC
6 Manuel A. Wagan, In Pro Per

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

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Manuel A. Wagan

Case No. CV08-01082 WHA

Plaintiff,

CERTIFICATE OF SERVICE

v.

SAN MATEO COUNTY SUPERIOR COURT

Defendant.

I, the undersigned, hereby certify that I am the Petitioner of this case stated above and presently incarcerated in Avenal State Prison in California.

That on April 9, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail in the Avenal State Prison Mail Room or by placing said copy(ies) into the hand of Correctional Officer who handle Legal Mail in Avenal State Prison Facility Five Building 530.

1. DORIAN JUNG
Deputy Attorney General
(State Bar No. 20016)
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

I declare under penalty of perjury that the foregoing is true and correct, have for portion alleged on information and belief, which portions I believe are true.

EXECUTED: Avenal, CA 93204, this 9 day of April 2008.

Signed:


Manuel A. Wagan In Pro
Per

ORIGINAL
FILED

APR 3 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MANUEL A. WAGAN, No. C 08-1082 WHA (PR)

Petitioner, ORDER DISMISSING CASE

v.

SAN MATEO COUNTY SUPERIOR
COURT,

Respondent.

Petitioner's request to voluntarily dismiss his petition for a writ of mandamus (document number 5) is GRANTED. This case is DISMISSED. The clerk shall close the file.

IT IS SO ORDERED.

Dated: April 3, 2008.

Wm. Alsup
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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Attached 1 Sent 11/11/2011

FILED

APR 3 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT 35
FOR THE NORTHERN DISTRICT OF CALIFORNIA 30

MANUEL A. WAGAN,

No. C 08-1082 WHA (PR)

Petitioner,

JUDGMENT

v.

SAN MATEO COUNTY SUPERIOR
COURT,

Respondent.

ENTERED IN CIVIL DOCKET 04/03/08

Petitioner having dismissed this case, judgment is entered in favor of respondent.

Petitioner shall obtain no relief by way of his petition.

IT IS SO ORDERED.Dated: April 3, 2008.WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE